

**IN THE UNITED STATES DISTRICT COURT FOR
THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

UNITED STATES' RESPONSE TO MOTION TO QUASH SUBPOENA

COMES NOW the United States of America, by and through Louis V. Franklin, Sr., Acting United States Attorney for the Middle District of Alabama, and William M. Welch, II, Chief of the Public Integrity Section of the Criminal Division of the United States Department of Justice, and hereby responds to the Motion to Quash Subpoena filed by William “Bill” Kurtz through his attorney. The United States submits that the Court should deny the Motion because the government anticipates that Mr. Kurtz’s testimony will be necessary and helpful to the Court in fashioning a reasonable sentence for the defendants in this case. To support its position, the United States submits the following:

1. In its sentencing memorandum, the United States has argued that this Court should enhance Defendant Scrushy's sentence by two levels for obstruction of justice. In particular, the United States submits that Defendant Scrushy obstructed justice by, inter alia, instructing William Kurtz not to cooperate with an agent of the FBI who was investigating whether Defendant Scrushy had violated the terms of his pre-sentence release order and to inform the FBI that he (Kurtz) was represented by Art Leach. When Mr. Kurtz was approached by Special Agent Keith Baker, Mr. Kurtz told Special Agent Baker exactly what Defendant Scrushy told him to say i.e., that he would not cooperate with the FBI and that he was

represented by Art Leach.

2. After Mr. Kurtz told Agent Baker that he was represented by Art Leach, the United States learned through Mr. Leach that Mr. Leach did not then, and had never, represented Mr. Kurtz.
3. This Court has received Special Agent Baker's testimony during the revocation hearing and the United States has referenced this testimony in its Sentencing Memorandum in which the government asserts that Defendant Scrushy qualifies for a two-level enhancement for obstruction of justice.
4. Defendant Scrushy has objected to the obstruction of justice enhancement because, in part, only Special Agent Baker has testified to Defendant Scrushy's instructions and false statements to Mr. Kurtz.
5. Consequently, the United States avers that Mr. Kurtz's presence during the sentencing hearing is necessary to ensure that he is available to provide testimony to the Court on Defendant Scrushy's obstructive conduct.

Respectfully submitted this the 20th day of June, 2007.

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THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

UNITED STATES OF AMERICA)
v.) CR. NO. 2:05cr119-MEF
DON EUGENE SIEGELMAN and)
RICHARD M. SCRUSHY)

CERTIFICATE OF SERVICE

I hereby certify that on June 20, 2007, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

Respectfully submitted,

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